(4)

C.S. 1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 2145 /2004

PETITIONER

Sanjay Kumar Shrivastava,
S/o. B.P. Shrivastava,
Aged about 39 years,
Graduate Civil Engineer,
R/o. H-2/32, Narmada Nagar,
Bilaspur, District Bilaspur (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through the Secretary,
Public Works Department,
Mantralaya, D.K.S. Bhawan,
Raipur (C.G.).

2. Engineer-in-Chief,
Public Works Department,
Raipur (C.G.)

3. Chief Engineer,
Public Works Department,
Bilaspur (C.G.).

P.R. No. 2162/04
Presented by Shri Rupesh Singh
dated 21-12-04

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS.

पंजीयन आयुक्त

THE PETITIONER.

AFR

(192)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2145 OF 2004

Sanjay Kumar Shrivastava

versus

State of Chhattisgarh and others

ORDER

Post for 6-12-2006

Sd/-
Satish K. Agnihotri
Judge

(193)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2145 OF 2004

Petitioner : Sanjay Kumar Shrivastava

versus

Respondents : State of Chhattisgarh and others

Present : Mr. Ashish Shrivastava, counsel for the petitioner.
Mr. G.K.Beriwal, Deputy Advocate General for the respondents/State.
Mr. K.L.Sahu, Executive Engineer is present in person.

ORDER

(Passed on 6th day of December, 2006)

By this petition filed under Article 226 of the Constitution of India, the petitioner impugns the order dated 6-10-2003 (Annexure P-17), whereby the representation of the petitioner for regularisation of his services on the post of Sub-Engineer in the Public Works Department has been rejected by respondent No.2 – Engineer-in-Chief, Public Works Department, Raipur. The petitioner seeks quashing of the impugned order dated 6-10-2003 (Annexure P-17) and absorption and regularisation of his services on the post of Sub-Engineer in the Public Works Department from the date of his initial appointment or with effect from the date his juniors have been regularised, with all consequential benefits.

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2. The indisputable facts in brief are that the petitioner was serving in the Public Works Department as daily wager Sub-Engineer. He was initially appointed and posted at Jashpur by order dated 2-5-1990, but later on, by order dated 21-5-1990 (Annexure P-1), the appointment order dated 2-5-1990 was modified and his posting was changed from Jashpur to Ambikapur and he was permitted to join his duties till 28-5-1990. The petitioner served as daily wager Sub-Engineer in the Public Works Department from 22-5-1990 till 31-3-2000.

3. The petitioner represented for regularisation of his services on the post of Sub-Engineer in the Public Works Department. Thereafter, in the year 1995, he approached the State Administrative Tribunal by filing an original application, being Original Application No.2281 of 1995, for regularisation of his services on the post of Sub-Engineer in the Public Works Department. Original Application No.2281 of 1995 was disposed of vide order dated 17-1-1997 (Annexure P-2) directing the respondent – State to constitute a screening committee to consider the suitability of the petitioner for regularisation of his services on the post occupied by him. The screening committee, by its minutes/report dated 19-5-1998 (Annexure P-3), rejected the suitability of the petitioner on the ground that the petitioner was appointed after 31-12-1988, as, on the basis of the memorandum of the General Administration Department of the State Government dated 11-11-1997, services of only those daily wager Sub-Engineers can be regularised who were appointed by 31-12-1988.

4. In the year 2000, under the policy of the State Government for termination of services of the daily wager employees,

the services of the petitioner was terminated with effect from 31-3-2000 by order dated 1-4-2000 (Annexure P-9).

5. Some writ petitions were filed challenging the termination of services of the daily wager employees appointed after 31-12-1988. In one of the said writ petitions, i.e., Writ Petition No.440 of 2000, by order dated 21-2-2000, the State Government was directed to reinstate all the daily wager employees working after 31-12-1988 and to constitute a committee for screening and to enquire about their suitability with regard to their posts and accordingly the writ petition was disposed of. Pursuant to the order dated 21-2-2000, the State Government issued a circular dated 26-2-2000 (Annexure P-10) directing all its departments to minutely scrutinize the suitability of each daily wager employee appointed after 31-12-1988, looking to the availability of regular sanctioned vacant post.

6. In the light of the decision dated 21-2-2000 passed in Writ Petition No.440 of 2000 and the circulars of the State Government dated 14-2-2000 and 26-2-2000 (Annexure P-10), the petitioner represented to the concerned authorities for regularisation of his services. Thereafter, a bifurcation of the State of Madhya Pradesh took place and a new State, i.e., State of Chhattisgarh came into existence with effect from 1-11-2000. The General Administration Department of Government of Chhattisgarh, vide its circular dated 2-12-2000 (Annexure P-11), issued a direction for re-engaging the services of the daily wager employees on daily wages basis. The petitioner made a representation dated 22-11-2001 (Annexure P-14) before respondent N.3 – Chief Engineer, Public Works Department, Bilaspur for his

reinstatement in the service, claiming therein that one Mr. Saurabh Sahu, who was junior to him and was appointed after 31-12-1988, is still continuing in the Public Works Department at Durg Division, but the petitioner has been removed from the service, and two other persons, namely, Mr. Praveen Kumar Tiwari and Mr. Chandrashekhar Chandrakar, have been regularised in the service in the Public Works Department at Rewa and Mahasamund respectively, but the petitioner is not being regularised in the service by the respondents.

7. The petitioner, being aggrieved by the inaction on the part of the respondents, filed a writ petition, being Writ Petition No.1552 of 2002, which was disposed of by order dated 26-3-2003 (Annexure P-16), directing the respondent – State to consider the representation of the petitioner on its own merits and take appropriate decision thereon within a period of three months from the date of communication/receipt of the certified copy of the order.

8. Respondent No.3, vide his letter dated 11-6-2003 (Annexure P-15), recommended the case of the petitioner and sent to respondent No.2, in the light of the order dated 26-3-2003 (Annexure P-16) passed in Writ Petition No.1552 of 2002.

9. Thereafter, the petitioner filed a contempt petition, being Contempt Petition No.79 of 2003, against the respondent – State for deciding his representation. In the meantime, the representation of the petitioner was decided by respondent No.2 vide impugned order dated 6-10-2003 (Annexure P-17) rejecting the prayer of the petitioner.

Accordingly, Contempt Petition No.79 of 2003 was also dismissed by order dated 7-5-2004 (Annexure P-18).

10. It is admitted case of the petitioner that the appointment of the petitioner was not in accordance with the constitutional scheme of employment or under any rules framed under proviso to Article 309 of the Constitution of India inviting applications from all the eligible candidates.

11. The Supreme Court, while dealing with the matters of daily wagers, *ad hoc* employees, probationers, temporary or contractual employees, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution of India, held that such appointments dehors the constitutional scheme amounts to back door entry in the matter of public employment.

12. A Constitution Bench of the Supreme Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others*[1] has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are *Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others*[2], *Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others*[3], *Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others*[4] and *U.P. State Road Transport Corporation vs. Man Singh*[5].

13. In the case of *Secretary, State of Karnataka and others vs. Umadevi (3) and others* (Supra), the Supreme Court observed as under :-

> "45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

> "47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

14. For the reasons above-stated and as per the dicta laid down by the Supreme Court in various cases, the petitioner has no right to the post and as such no direction to reinstate the petitioner on the post of daily wager Sub-Engineer can be passed.

15. This petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 4 SCC 1
2 (2006) 7 SCC 488
3 (2006) 7 SCC 684
4 2006 AIR SCW 2497
5 2006 AIR SCW 5159

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